



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF NEW
HAMPSHIRE, S.E.I.U., LOCAL 1984

Petitioner

v.

STATE OF NEW HAMPSHIRE, DIVISION OF
STATE POLICE, DEPARTMENT OF SAFETY

Respondent

CASE NO. P-0713:2

DECISION NO. 90-69

APPEARANCES

Representing the State Employees' Association of N.H.:

Christopher Henchey, Chief Negotiator

Representing the State of N.H., Division of State Police:

David S. Peck, Esq., Sr. Asst. Attorney General

Also in attendance:

Thomas F. Manning, State of N. H.
Rep. Peter M. Simon, General Court, Reg. Revenues
Rep. Maurice B. MacDonald, " " Executive & Admn.
Rep. Arthur P. Klemm, Jr., " " Reg. Revenues
Rep. Miriam Dunn, " " Ed. & A. Committee
Denis Parker, Executive Director, SEA
Richard E. Molan, Esq., Counsel, SEA
David L. Nixon, Esq.
Lynn Presby, Col., State Police
Richard Flynn, Comm., Dept. of Labor
Peter J. Hilchey, N. H. Troopers Association
W. Ryan, IBPO
Benjamin Mozrall, SEA Chapter 52
Michael Doucette, " " "
Michael Miles, " " "
Louis Copponi, " " "

BACKGROUND

On January 23, 1990, the State Employees' Association of New Hampshire, S.E.I.U., Local 1984 (SEA) filed a modification petition to establish a separate unit of all sworn state police personnel which would include all troopers, corporals, sergeants, lieutenants, captains and majors stating that the sworn personnel have a distinct community of interest relative to their conditions of employment which is distinct and separate from other employees in the Department of Safety.

The State of New Hampshire (State) opposed the modification on the basis that (a) the proposed unit included both supervisory and employees they supervision in violation of 273-A:8, II, (b) the proposed unit is part of a larger unit; namely, Department of Safety, and if granted would result in an inappropriate fragment of the larger unit with whom it shares a community of interest and (c) the formation of the proposed unit would be inefficient.

A hearing on the request for modification was held in the PELRB (Board) office in Concord on April 26, 1990 with all parties represented.

FINDINGS OF FACT

1. The modification petition was filed subsequent to the legislative hearings on H.B. 1323 introduced by Rep. Simon of Rockingham, Dist. 9 and Rep. Klemm of Rockingham, Dist. 22, which would have authorized the uniform officers of state police of the department of safety to have an election no later than August 30, 1990 for the purpose of recertifying or decertifying their bargaining representative.
2. H.B. 1323 now in Interim Study.
3. The window period exists for certain actions for public employees authorized under RSA 273-A:10 (b) and the Board's Rules and Regulations, Pub 301.02 (a) which state:

273-A:10 (b) ... "may hold hearings for the purpose of determining whether or not grounds exist for conducting an election. Upon so finding, the board shall order an election to be held under its supervision, and in accordance with rules prescribed by the board....."

Pub 301.02 (a) ... "A petition for certification as the exclusive representative of a bargaining unit for which a collective bargaining agreement constituting a bar to election under RSA 273-A:11, I (b) presently exists must be filed no earlier than 210 days and should be filed no later than 150 days prior to the budget submission date of the affected public employer in the year that agreement expires, notwithstanding any provisions in the agreement for extension or renewal....."

4. February 15th is the designated budget submission date for the State of New Hampshire.
5. The window period (150 to 210 days prior to budget submission date) is between July 20, 1990 and September 18, 1990.

DECISION AND ORDER

Although the Board's general position is to avoid fragmentation of bargaining unit, from all the evidence at the hearing and under the statutory guidelines set forth in RSA 273-A, the Board concludes that there exists a community of interest among the sworn police personnel whose job classifications are unique to their profession and not shared by other employees of the Dept.

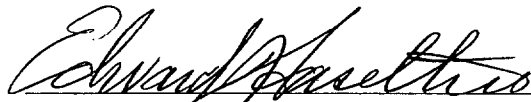
of Safety. The N. H. Supreme Court in Appeal of University System of New Hampshire V. PELRB, 131 NH 368, 553, A.2d 770, 12/30/88 states that, ... "More importantly, the statute (273-A) does not foreclose the PELRB from making a redetermination of a unit. Rather, the statute has been interpreted as giving the PELRB broad subject matter jurisdiction to determine and certify units...." and, "...that the statutory and regulatory framework which guides PELRB decisions is flexible, and gives much discretion to the PELRB expertise. The statute and regulation require only that certain factors may be considered in determining whether a community of interest exists...."

The petition for modification of the Department of Safety unit to establish a separate unit for the sworn state police personnel is hereby GRANTED subject to an election in accordance with the requirements of 273-A.

PELRB will entertain a petition for certification of a separate unit under RSA 273-A:10 during the open, or window, period which is July 20th through September 18, 1990.

If all requirements are met, an election will be scheduled under the jurisdiction of PELRB between the time limits prescribed under the Board's rules and regulations, 120 to 180 days prior to the budget submission date which is between August 19 and October 18, 1990.

The composition of the unit will be determined at a pre-election conference after the proper filing and at which time an election date will also be set.



EDWARD J. HASELTINE, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 7th day of August, 1990.

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and James C. Anderson present and voting. (Vote taken prior to the appointment of Mr. Anderson's replacement on the Board.)